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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/506,533	02/17/2000	Nicholas J. DeCristofaro	30-4519CIP1(4710)	7488
7590	07/23/2004		EXAMINER [REDACTED]	TAMAI, KARL I
ERNEST D. BUFF ERNEST D. BUFF 245 SOUTH STREET MORRISTOWN, NJ 07960			ART UNIT [REDACTED]	PAPER NUMBER 2834

DATE MAILED: 07/23/2004

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

MAILED
JUL 23 2004
GROUP 2800

Application Number: 09/506,533
Filing Date: February 17, 2000
Appellants: DECRISTOFARO ET AL.

Ernest Buff
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 3/11/2004.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct. The examiner notes the Applicant did not refer to the specification by page and line number as set forth in MPEP 1206 (c) (5).

(6) *Issues*

The appellant's statement of the issues in the brief is incorrect. Issue (b) regarding the objection to the drawings is a petitionable issue to the Commissioner under 37 CFR 1.181, and is not an appealable issue. Issues (c)-(k) are withdrawn from consideration because the examiner has withdrawn the prior art rejection of these claims.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 1-36 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8). For the only remaining issue (a), no reason is provided for the separation of any claims.

(8) *ClaimsAppealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

<u>Patent Number</u>	<u>Inventor</u>	<u>Publication Date</u>
DE 28 05 438	Geschka	8/1979
US 4255684	Mishcler et al.	3/1981
US 2556013	Thomas	6/1951
US 3591819	Laing	7/1971
US 4197146	Frischmann	4/1980
US 4409041	Datta et al.	10/1983
US 5922143	Verin et al.	7/1999
US 4881989	Yoshizawa et al.	11/1989
US 4763030	Clark et al.	8/1988
US 6462456	DeCristofaro et al.	10/2002

(10) *Grounds of Rejection*

The following grounds of rejection are applicable to the appealed claims:

Claims 1-36 are rejected under 35 U.S.C. 112. This rejection is set forth in a prior Office Action, mailed on October 10, 2003.

Claim Rejections - 35 USC § 112, First Paragraph

Claims 1-36 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. The specification does not contain a full, clear, concise, and exact written description of each strip of the segment having a top and bottom surface with a line normal to either surface is substantially perpendicular to the axis of rotation.

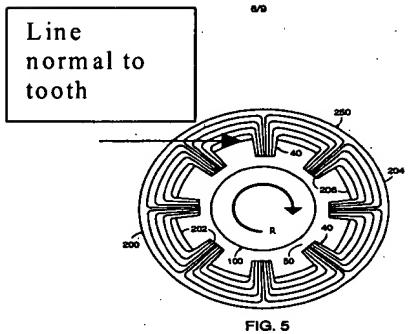
(11) Response to Argument

Issue (a) Written Description Requirement

The examiner's position is that the specification does not contain a full, clear, concise, and exact written description of a line normal to the top and bottom surfaces of the teeth at any point on the surfaces being substantially perpendicular to the axis of rotation of the rotor, as recited by the claims 1, 22, 26, 35, 36, 37, 41, and 47.

The Applicant's amended drawing 4a filed 10/31/2003 show two normal lines, one extending to the left of the page and one extending to the top of the page. The line normal to the teeth section 230 is not substantially perpendicular to the axis of rotation. (perpendicular = geometric objects are perpendicular if they intersect at an angle of 90 degrees, McGraw Hill Dictionary of Scientific and Technical Terms). The examiner has added an arrow to figure 5 to clearly demonstrate that a line normal to the top and

bottom surfaces of the tooth section does not insect the axis of rotation (center of the circular stator), therefore it cannot be perpendicular to the axis of rotation.



The Applicant's argument regarding the specification page 6, lines 13-18 is not persuasive because it does not provide a full, clear, concise, and exact written description for the tooth having "(i) a line normal to either of said surfaces (top and bottom) at substantially any point thereon is substantially perpendicular to the axis of rotation of said rotor" as recited in claims 1, 22, 26, 35, 36, 37, 41, and 47.

The rejection is proper and should be maintained.

Issue (b) Drawings

This issue is not addressed because an objection to the drawings is not an appealable issue.

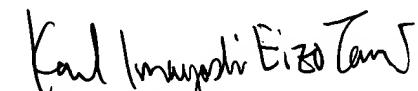
Issue (c-j) Claims 1-36 Under 35 USC 103 over '438 and Mischler.

The examiner withdraws the prior art rejections of claims 1-36 because '438 does not teach the limitation of "a line normal to either of said surfaces (top and bottom) at

substantially any point thereon is substantially perpendicular to the axis of rotation of said rotor". In reference '438 only a line normal to the center surface of the tooth is perpendicular to the axis of rotation, a line normal to the surface at any point on the surface of the tooth which is spaced away from the center will not cross the axis of rotation and there cannot be perpendicular to the axis of rotation.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



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Art Unit 2834

KARL TAMAI
PRIMARY EXAMINER

KIT

July 22, 2004

Conferees

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